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SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC) - STATUS OF
DISCUSSIONS ON LIBYAN EXTENSION REQUEST AND RABTA
CONVERSION

REF: SECSTATE 132224 (NOTAL)

This is CWC-73-04.

SUMMARY

1. (SBU) As noted in the scene setter for the 37th Executive Council session (septel), one important set of decisions under consideration at the EC involve the requests from Libya and Albania for extension of their destruction deadlines. At this point, the prospects for the adoption of both sets of extension requests is questionable. The Albanian extension request is addressed in the scene setter cable. Delegation has indications there may be a problems from some countries, notably France and Germany, with providing "in principle" extensions for Libya and Albania. In the recent past, they have expressed displeasure/disapproval over the use of this mechanism and seem to regret that its use was adopted with regard to U.S. and Russian extensions. Delegation expects those concerns to be expressed in the run-up to the EC, and probably raised during the EC, though it remains unclear whether the strength of France and Germany's disagreement is sufficient for them to refuse to join consensus.

2. (SBU) Delegation also notes that the subject of the Albanian and Libyan extension requests has become the catalyst for reviving another controversial issue thought to have been put behind us; site visits. Germany and France have intimated, with the apparent support of other WEOG members, for including site visits as an element of the Libyan and Albanian extension request decision documents. In the course of various conversations, Germany, France, and Netherlands have indicated they believe it is also necessary to revive site visits in Russia. WEOG delegations generally appear to be dissatisfied and restless over what they see as a pervasive and continuing failure on the part of Russia to meet its Convention obligations.

3. (SBU) With regard to the Libyan conversion request for Rabta, the U.S./U.K./Italy/Libya proposal has been previewed with the Western Group. The discussion indicates that the U.S. and others will need to do a substantial amount of spade-work with other delegations in the run-up to the EC and at the EC itself in order to assuage various concerns. While the conversion request will probably not be adopted in June, it will be important to do the work necessary to ensure its adoption in October. End Summary.

LIBYAN EXTENSION REQUEST

4. (SBU) There is no indication that any delegation holds principled opposition to the Libyan request for new destruction deadlines. In fact, there is a strong general feeling that it is important to show that the OPCW is willing to find a practical solution to the problems facing new States Parties. The only problem that has arisen is the concern some delegations (particularly Germany and France) have with "in principle" deadline extensions. Similar concerns have been noted regarding the Albanian extension request, and were expressed last year with regard to U.S. and Russian deadline extensions.

5. (SBU) We fully anticipate that France, Germany and others may continue to harp on this issue up to and at the EC. During this period, it will be important for the U.S. to work with other delegations and emphasize that "in principle" extensions are nothing new to the organization. What was acceptable for the U.S. and Russia should certainly be acceptable for Libya. Ultimately, we have our doubts that France, Germany or others would be willing to break consensus

on the Libyan request. In the absence of a good alternative, which has not been presented to us by France or Germany, they will be hard-pressed to bear the onus of having denied the Libyan extension request.

LIBYA - RABTA CONVERSION - FRENCH VIEWS

16. (SBU) With regard to creating a mechanism by which to permit the conversion of Libya's chemical weapons production facility at Rabta for purposes not inconsistent with the Convention, it is apparent that France and Germany have difficulties with the current U.S./UK/Italian/Libyan approach. The French delegation has stated that while it has no principled objection either to the concept of converting Rabta, or the use of a technical change as a means for enabling such a conversion, it does not favor the case-by-case approach laid out in our proposal. France specifically has expressed concern this approach will lead to the arbitrary, unequal application of standards for future conversion, along with the attendant legal difficulties.

17. (SBU) The French delegation, allegedly under instructions from Paris, has presented an alternative proposal for a technical change (text faxed back to AC/CB, AC/VC) that has the practical effect of re-starting the conversion clock for latecomers by extending the conversion period to twelve years from EIF of the Convention. This text would have the effect, France asserts, of keeping pressure on newcomers to complete their conversions quickly, while at the same time preserving the equal treatment of all SPs under the convention.

Begin Proposed French Text:

"For those countries having ratified or adhered to the Convention after the 29th April 2003 (sixth anniversary of EIF), conversion of a chemical weapons production facility shall be completed not later than twelve years after entry into force of this Convention".

End Proposed French Text.

FRG VIEWS

18. (SBU) Germany has stated that since the conversion request has not yet been submitted it does not envision any real action being taken on the request until the October EC, vice this June. Nevertheless, Germany has emphasized that it is not expressing a lack of urgency, simply that there is some time to work it. Moreover Germany has indicated that in their view the timeframe for conversion as set out in the Convention is not "technical or administrative" and thus cannot be changed by a technical change, as is currently proposed. Rather, such a change is substantive. Germany will not make this argument publicly, but noted that others, like Iran and perhaps other NAM countries, may in fact make such an argument.

19. (SBU) Germany has also expressed concern that Russia may take advantage of the proposed technical change mechanism to attempt to do likewise with destruction deadline extension requests. Russia could claim that a technical change for extending the conversion deadline is no different than for changing destruction deadlines and that destruction deadlines should be treated the same way in the future.

110. (SBU) As a bureaucratic matter, any technical change to the Convention would require processing through sixteen state parliaments, as well as Germany's national parliament. Germany does not rule this out as a possibility, but noted that if this is the course of action chosen, this is what they would be up against domestically. The saxitoxin case of a few years ago presented a model or example for what they would have to do. Thus, rather than pursuing a technical change to permit the Rabta conversion, Germany would prefer to have the change brought about through report language or an EC decision document. Germany has no objection to the actual text of the technical change we have proposed, only the use of a technical change itself.

111. (SBU) To this extent, the French and German positions are precisely the opposite of one another; the French do not mind the mechanism of a technical change, but do not like the text we have proposed while the Germans do not mind the text, but want a different mechanism. We would emphasize that apart from contradicting each other, the French and German positions are, at different times and in different ways, not only contradictory, but also vacuous.

U.S. RESPONSES

112. (SBU) During meetings with France and Germany, as well

as UK and Italy, our respective delegations provided the following responses to rebut the French and German positions.

¶13. (SBU) First, re-setting the clock for another six years, starting April 29, 2003, as France proposes, actually has the opposite effect from pressuring new SPs to complete conversion quickly. Using Rabta as an example, it does not seem reasonable to assume it will require six years to complete the conversion. But under the French proposal the Libyans would actually have until April 29, 2009, to complete their conversion. Thus, far from pressuring them to complete their conversion, the lack of flexibility by the CSP to set an earlier date would actually serve to grant more time than is needed or reasonable.

¶14. (SBU) Second, the equal treatment argument does not wash since, under France's proposal, an SP joining the convention in 2008, for example, would only have one year to complete a conversion. If we were faced, as is the case with Libya, with a compelling case for permitting the conversion, the SP in question would only have one year to complete it. This did not seem like "equal" treatment, or a reasonable approach. More important, with its lack of flexibility to set a date, the practical effect of France's position would be to either deny the conversion or to require further action by the EC and CSP to enable the SP to go beyond the year remaining to it.

¶15. (SBU) Third, equal treatment was not the law of the land. There were other provisions in the Convention that allowed for dissimilar treatment of SPs, depending upon circumstances.

¶16. (SBU) Fourth, Germany's argument for a decision document or report language also seems untenable. While changing the deadline for conversion does not require an actual Convention amendment, recording it in the manner Germany was proposing would completely trivialize the action and invite exactly the kind of effort by Russia to adopt a similar strategy with regard to destruction deadlines that Germany was wants to avoid. We understood Germany's desire to avoid parliamentary involvement, but a decision document or report language is not appropriate for a decision or action of this significance.

¶17. (SBU) Generally, we emphasized that our proposal is the best of several admittedly imperfect options; it definitely had its warts but, overall, was defensible and represented the quickest way to move forward. Germany allowed that the parliamentary process could probably be engaged in the timelines laid out in the Convention anyway -- that is they could do their domestic piece of the process in the same or less time than it will take for the request to wend its way through the OPCW process -- so they would probably not have to delay anything.

¶18. (SBU) In analyzing France's behavior, several things suggest that its proposal is being driven locally, rather than originating in Paris. First, in basic respects it is not well thought out, was not well defended when it was presented, and the text itself is "kind of pathetic", as UK put it. It does not seem like a "real" proposal that has been carefully vetted. Moreover, the French delegation indicated that the only place their counterproposal was going to be proffered was here in The Hague. There is to be no notification by the GOF via capitals.

¶19. (SBU) Delegation believes Germany's parliamentary claim is serious. But even the Germans admit that engaging their parliament on this could be readily done and need not delay the process. Delegation believes that on further reflection they will agree that, intellectually, they cannot argue that report language or a decision document would be more appropriate than the technical change. Especially given their concerns over Russia using this as a precedent.

¶20. (SBU) Given the unconstructive approach taken so far by France and Germany, delegation believes that the best chance for success is, in the near term, to essentially ignore the French proposal and to proceed with building support among EC members, especially African and Arab countries. As noted above, their arguments to support their position are very weak and we do not believe they will gain traction with other Council members. However, as a later concession to France and to gain its support, delegation sees no serious harm to our proposal by adding a provision along the lines France has proposed. We have in mind text along the lines of "In no case shall an extension exceed six years after entry into force of the Convention for such a State Party". The practical effect would be to preserve our current proposal, while at the same time assuring that newly-acceding States Parties are not granted a longer period of time for completing conversions than original members were given.

¶21. (SBU) After consulting with UK and Italy, delegation agreed to a UK briefing to WEOG on 15 June on the proposal. UK had drafted a set of talking points/non-paper which

Delegation made inputs to ahead of time. Several WEOG members responded to the presentation by echoing France's "equal treatment" mantra, most notably Canada and Spain. Based on the number and similarity of these interventions, delegation speculates that France and/or Germany had been busy in the day or two prior to the WEOG meeting. Whatever the origin, however, skepticism of the case-by-case approach was widespread, as was support for the notion of equal treatment.

NEXT STEPS

122. (SBU) UK delegation has taken the step of requesting London's support for a high-level demarche to Paris, Berlin, and Ottawa, requesting their delegations be directed to assume a more accommodating and constructive approach. UK indicated 10 Downing Street had been slugged in its cable. The UK delegation has been given to understand that London supports such a demarche. Delegation believes it is worth considering whether Washington may not wish to do likewise.

123. (SBU) Delegation believes that arguing effectively against the equal treatment position of France and others will be important to gaining support for our proposal. We also believe that the two best arguments against the equal treatment principle are that it contradicts the "maintaining pressure" principle, as described in paragraph 13 above, and that "unequal treatment" has already been clearly established as a precedent in the context of establishing new deadlines for the destruction of Category 1 CW. Indeed, also before the Council this session are requests for extensions of deadlines for Albania and Libya. As with similar deadline extension requests for the US and Russia, the approach being proposed is for the Council to gather as much information as possible and, based on that information, make a decision for a new deadline date that is realistic and reflects the information available. It is not a "one size fits all" approach but a case-by-case approach that preserves for the States Parties their ability to exercise judiciousness and the practical effect of which is to establish different dates for different States Parties. While these dates are different, they would nonetheless appropriate to the particular set of circumstances at hand.

124. (SBU) After the appropriate African and Arab states have been demarched in Capitals concerning the proposal, we believe it is important to follow up here with a meeting or series of meetings, presenting the same material and urging their unrestrained support for this initiative. Delegation understands this is consistent with the plans contemplated in Washington and agreed generally among U.S., UK, and Italy. Upon receipt of the relevant guidance, delegation intends to host a meeting of African and Arab delegations along the lines described. We intend to suggest that the Libyan representative personally appeal to others to request guidance from their capitals to offer support during the upcoming Council session.

125. (U) Javits sends.
SOBEL